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7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 OCADIAN CARE CENTERS, LLC,
13 a California limited liability company,

14 Plaintiff,

15 vs.

16 CLARENDON NATIONAL
INSURANCE COMPANY, a
17 corporation; and DOES 1 through 50,
18 inclusive,

19 Defendants.
20

CASE NO. CGC-06-07096 MHP

**STIPULATED PROTECTIVE
ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, Plaintiff Ocadian Care
6 Centers, LLC (“Plaintiff”) and Defendant Clarendon National Insurance Company
7 (“Defendant”), by and through their respective counsel, hereby stipulate to and
8 petition the court to enter the following Stipulated Protective Order. The parties
9 acknowledge that this Order does not confer blanket protections on all disclosures
10 or responses to discovery and that the protection it affords extends only to the
11 limited information or items that are entitled under the applicable legal principles
12 to treatment as confidential. The parties further acknowledge, as set forth in
13 Section 10, below, that this Stipulated Protective Order creates no entitlement to
14 file confidential information under seal; Civil Local Rule 79-5 sets forth the
15 procedures that must be followed and reflects the standards that will be applied
16 when a party seeks permission from the court to file material under seal.

17
18 2. DEFINITIONS

19 2.1 Party: any party to this action, including all of its officers,
20 directors, employees, consultants, retained experts, and outside counsel (and their
21 support staff).

22 2.2 Disclosure or Discovery Material: all items or information,
23 regardless of the medium or manner generated, stored, or maintained (including,
24 among other things, testimony, transcripts, or tangible things) that are produced or
25 generated in disclosures or responses to discovery in this matter.

26 2.3 “Confidential” Information or Items: information (regardless of
27 how generated, stored or maintained) or tangible things that qualify for protection
28 under standards developed under F.R.Civ.P. 26(c).

1 2.4 “Confidential - Attorneys’/Experts’ Eyes Only” Information or
2 Items: Workers’ compensation claim files produced by Defendant in this action.

3 2.5 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 2.6 Producing Party: a Party or non-party that produces Disclosure
6 or Discovery Material in this action.

7 2.7 Designating Party: a Party or non-party that designates
8 information or items that it produces in disclosures or in responses to discovery as
9 “Confidential” or “Confidential - Attorneys’/Experts’ Eyes Only.”

10 2.8 Protected Material: any Disclosure or Discovery Material that is
11 designated as “Confidential” or as “Confidential - Attorneys’/Experts’ Eyes Only.”

12 2.9 Outside Counsel: attorneys who are not employees of a Party
13 but who are retained to represent or advise a Party in this action.

14 2.10 House Counsel: attorneys who are employees of a Party.

15 2.11 Counsel (without qualifier): Outside Counsel and House
16 Counsel (as well as their support staffs).

17 2.12 Expert: a person with specialized knowledge or experience in a
18 matter pertinent to the litigation who has been retained by a Party or its counsel to
19 serve as an expert witness or as a consultant in this action. This definition includes
20 a professional jury or trial consultant retained in connection with this litigation.

21 2.13 Professional Vendors: persons or entities that provide litigation
22 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
23 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
24 and their employees and subcontractors.

25
26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also any information copied or extracted

1 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
2 testimony, conversations, or presentations by parties or counsel to or in court or in
3 other settings that might reveal Protected Material.

4
5 4. DURATION

6 Even after the termination of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees
8 otherwise in writing or a court order otherwise directs.

9
10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for
12 Protection. Each Party or non-party that designates information or items for
13 protection under this Order must take care to limit any such designation to specific
14 material that qualifies under the appropriate standards. A Designating Party must
15 take care to designate for protection only those parts of material, documents, items,
16 or oral or written communications that qualify – so that other portions of the
17 material, documents, items, or communications for which protection is not
18 warranted are not swept unjustifiably within the ambit of this Order. Mass,
19 indiscriminate, or routinized designations are prohibited. Designations that are
20 shown to be clearly unjustified, or that have been made for an improper purpose
21 (e.g., to unnecessarily encumber or retard the case development process, or to
22 impose unnecessary expenses and burdens on other parties), expose the
23 Designating Party to sanctions. If it comes to a Party's or a non-party's attention
24 that information or items that it designated for protection do not qualify for
25 protection at all, or do not qualify for the level of protection initially asserted, that
26 Party or non-party must promptly notify all other parties that it is withdrawing the
27 mistaken designation.
28

1 5.2 Manner and Timing of Designations. Except as otherwise
2 stipulated or ordered, material that qualifies for protection under this Order must be
3 clearly so designated before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (apart from
6 transcripts of depositions or other pretrial or trial proceedings), that the Producing
7 Party affix the legend “Confidential” or “Confidential - Attorneys’/Experts’ Eyes
8 Only” on each page (preferably the bottom of each page) that contains Protected
9 Material.

10 (b) for testimony given in deposition or in other pretrial or
11 trial proceedings, that the Party or non-party offering or sponsoring the testimony
12 identify on the record, before the close of the deposition, hearing, or other
13 proceeding, all protected testimony, and further specify any portions of the
14 testimony that qualify as “Confidential” or “Confidential - Attorneys’/Experts’
15 Eyes Only.” When it is impractical to identify separately each portion of
16 testimony that is entitled to protection, and when it appears that substantial
17 portions of the testimony may qualify for protection, the Party or non-party that
18 sponsors, offers, or gives the testimony may invoke on the record (before the
19 deposition or proceeding is concluded) a right to have up to 20 days from receipt of
20 the deposition transcript to identify the specific portions of the testimony as to
21 which protection is sought and to specify the level of protection being asserted
22 (“Confidential” or “Confidential - Attorneys’/Experts’ Eyes Only”). Only those
23 portions of the testimony that are appropriately designated for protection within the
24 20 days from receipt of the deposition transcript shall be covered by the provisions
25 of this Stipulated Protective Order.

26 (c) for information produced in some form other than
27 documentary, and for any other tangible items, that the Producing Party affix in a
28 prominent place on the exterior of the container or containers in which the

1 information or item is stored the legend “Confidential” or “Confidential -
2 Attorneys’/Experts’ Eyes Only.”

3 5.3 Inadvertent Failures to Designate. If timely corrected, an
4 inadvertent failure to designate qualified information or items as “Confidential” or
5 “Confidential - Attorneys’/Experts’ Eyes Only” does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material.
7 If material is appropriately designated as “Confidential” or “Confidential -
8 Attorneys’/Experts’ Eyes Only” after the material was initially produced, the
9 Receiving Party, on timely notification of the designation, must make reasonable
10 efforts to assure that the material is treated in accordance with the provisions of
11 this Order.

12
13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. A Party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge
16 promptly after the original designation is disclosed.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
18 Designating Party’s confidentiality designation must do so in good faith and must
19 begin the process by writing a meet and confer letter. The meet and confer process
20 shall also include conferring directly (in voice to voice dialogue) with counsel for
21 the Designating Party. In conferring, the challenging Party must explain the basis
22 for its belief that the confidentiality designation was not proper and must give the
23 Designating Party an opportunity to review the designated material, to reconsider
24 the circumstances, and, if no change in designation is offered, to explain the basis
25 for the chosen designation. A challenging Party may proceed to the next stage of
26 the challenge process only if it has engaged in this meet and confer process first.

27 6.3 Judicial Intervention. A Party that elects to press a challenge to
28 a confidentiality designation after considering the justification offered by the

1 Designating Party may seek court intervention or direction from the court as
2 identified by the court at the initial Case Management Conference on April 3,
3 2007. If the challenge is not resolved by these methods, then the challenging party
4 may file and serve a motion under Civil Local Rule 7 (and in compliance with
5 Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets
6 forth in detail the basis for the challenge. Each such motion must be accompanied
7 by a competent declaration that affirms that the movant has complied with the meet
8 and confer requirements imposed in the preceding paragraph and that sets forth
9 with specificity the justification for the confidentiality designation that was given
10 by the Designating Party in the meet and confer dialogue.

11 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Until the court rules on the challenge, all parties shall continue
13 to afford the material in question the level of protection to which it is entitled under
14 the Producing Party's designation.

15
16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material
18 that is disclosed or produced by another Party or by a non-party in connection with
19 this case only for prosecuting, defending, or attempting to settle this litigation.
20 Such Protected Material may be disclosed only to the categories of persons and
21 under the conditions described in this Order. When the litigation has been
22 terminated, a Receiving Party must comply with the provisions of section 11,
23 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "Confidential" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

Receiving Party may disclose any information or item designated “Confidential” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation.

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary; and

(g) the author of the document or the original source of the information.

7.3 Disclosure of “Confidential - Attorneys’/Experts’ Eyes Only” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “Confidential - Attorneys’/Experts’ Eyes Only” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) experts of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation; and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “Confidential” or “Confidential - Attorneys’/Experts’ Eyes Only” the Receiving Party must so notify the Designating Party, in writing (by fax or email, if possible) promptly and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the

1 expenses of seeking protection in that court of its confidential material – and
2 nothing in these provisions should be construed as authorizing or encouraging a
3 Receiving Party in this action to disobey a lawful directive from another court.
4

5 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has
7 disclosed Protected Material to any person or in any circumstance not authorized
8 under this Stipulated Protective Order, the Receiving Party must immediately (a)
9 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
10 best efforts to retrieve all copies of the Protected Material, and (c) inform the
11 person or persons to whom unauthorized disclosures were made of this Order.
12

13 10. FILING PROTECTED MATERIAL. Without written permission
14 from the Designating Party or a court order secured after appropriate notice to all
15 interested persons, a Party may not file in the public record in this action any
16 Protected Material. A Party that seeks to file under seal any Protected Material
17 must comply with Civil Local Rule 79-5.
18

19 11. FINAL DISPOSITION. After the final termination of this action, all
20 Protected Material shall remain stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.
23

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right
26 of any person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of
28 this Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in
2 this Stipulated Protective Order. Similarly, no Party waives any right to object on
3 any ground to use in evidence any of the material covered by this Protective Order.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
6

7 Roxborough, Pomerance & Nye LLP

8
9 DATED: April 11, 2007

By: /S/ David R. Ginsburg
Drew E. Pomerance, Esq.
David R. Ginsburg, Esq.
Attorneys for Plaintiff,
OCADIAN CARE CENTERS, LLC
12

13
14 Harrington, Foxx, Dubrow & Canter, LLP

15
16 DATED: April 11, 2007

By: /S/ Kevin P. McNamara
Kevin P. McNamara, Esq.
Attorneys for Defendant, CLARENDON
NATIONAL INSURANCE COMPANY
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ORDER

Having considered the foregoing stipulation and good cause appearing
therefore:

IT IS SO ORDERED.

DATE: 4/12/2007

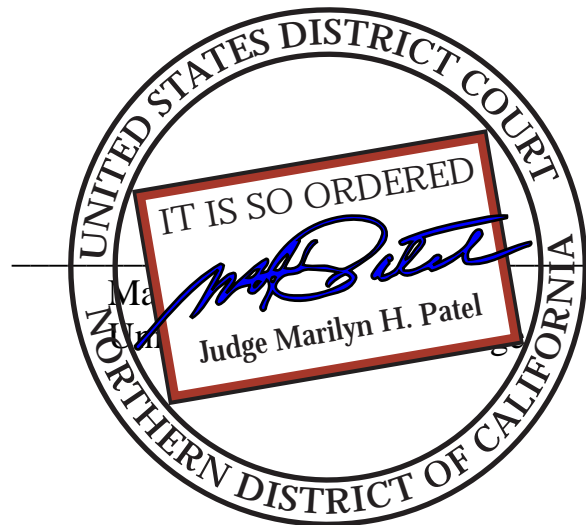


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ in the case of Ocadian Care Centers, LLC v. Clarendon National Insurance Company, case number CGC-06-07096 MHP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]